

REMARKS

The courtesies extended by the examiner and his supervisor during the personal interview of January 19, 2005 are appreciated.

Claims 8-12 and 17-19 have been cancelled without prejudice.

All pending claims have been rejected under 35 U.S.C. 101 as directed to non-statutory subject matter on the basis that the recited steps could be performed using pencil and paper. This rejection is clearly improper and directly contrary to legal authority which is binding precedent on the U.S. Patent and Trademark Office. As the predecessor court to the current Court of Appeals for the Federal Circuit stated over thirty years ago, "We cannot agree with the board that these claims (all the steps of which can be carried out by the disclosed apparatus) are directed to non-statutory processes merely because some or all the steps therein can also be carried out in or with the aid of the human mind or because it may be necessary for one performing the processes to think." 431 F.2d 882 (C.C.P.A. 1970). More recently, both the U.S. Supreme Court and the Court of Appeals for the Federal Circuit have addressed the same type of rejection now being asserted in the present application and have flatly rejected it, "[t]he inclusion in a patent of a process that may be performed by a person, but that also is capable of being performed by a machine, is not fatal to patent ability." *Alco Standard Corp. v. Tenn. Valley Auth.* 808 F.2d 1490, 1496 (Fed. Cir. 1986)(quoting *Diamond v. Diehr*, 450 U.S. 175 (1981)). Thus, the present 35 U.S.C 101 rejection is contrary to established law and should be

withdrawn. However, applicant understands that the examiner will not withdraw the rejection and in the interest of expediting the allowance of the present application, the applicant has amended the independent claims as suggested by the examiner, without prejudice to file the unamended claims in further applications.

The examiner has maintained his rejections of Claims 2-7 and 13-16 as obvious over Matheson in view of Fabre asserting that the examiner is unable to locate any evidence that the claim parameters are result effective. In response the applicant directs the examiner's attention to Figure 12 and the description on page 52 which describes how the resource scheduler of the present application tracks a mathematically derived ideal trajectory, and to Figure 13 and the description on page 53 which describes how the claimed parameters can be implemented to produce a solution which tracks a simplified target trajectory. Further, independent Claim 2 recites, *inter alia*, classifying the problem as a function of the slack time and total trip time. Pages 54 and 55 of the Specification describe how the ratio of the slack time and total trip time can be used to classify the problem to provide a solution with a trajectory as shown in Figure 13. Clearly this is direct evidence that the ratio of the slack time to the total trip time to classify the problem is a results effective parameter. Note that there is no disclosure in Matheson of the term slack time, and thus there is not any disclosure that the ratio of the slack time to the total trip time is a results effective parameter.

Likewise, Claim 6 recites, *inter alia*, classifying the problem as a function of the resource exception and total trip time. Page 55 of the Specification describes how the

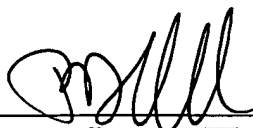
ratio of resource exception and total trip time can be used to classify the problem to provide a solution with a trajectory as shown in Figure 13. Clearly this is direct evidence that the ratio of the resource exception to the total trip time to classify the problem is a results effective parameter. Note that there is no disclosure in Matheson of the ratio of the resource exception to the total trip time is a results effective parameter to classify the problem.

As applicant has completely described how the results effective parameters can be used to achieve the target trajectory as illustrated in Figure 13, and the cited art does not recognize the results effective parameters, withdrawal of the rejection of Claims 2-7 is appropriate.

With respect to Claim 13, the examiner's response to the applicant's argument is not clear. In the Office Action dated March 24, 2004, the examiner asserted that "selecting the opportunities in the order determined by the classification is a scaling parameter which inherently weighs the opportunities." (Page 17). The examiner has not addressed the applicant's argument regarding the requirements necessary to rely on "inherency" as the basis for a rejection. Instead, in the present Office Action the examiner changes the basis for the rejection and states that Fabre discloses "taking the requests in order and giving each request as many opportunities in the initial plan as are required to saturate the request, wherein the saturation level is equivalent to a weighting level". (Page 16). Claim 13 recites "weighting the resource exception and cost factors associated with the random move with a scaling parameter related to the classification of

the problem.” The examiner has not described how the “saturation level” weights the “resource exceptions and costs factors” as recited in the claim. Clearly, saturating the request with opportunities from the initial plan has nothing to do with weighting “resource exceptions and cost factors” and the cited reference is absolutely silent to this issue. Withdrawal of the rejection of Claims 13-16 is requested.

Respectfully submitted,



L. Lawton Rogers, III

Reg. No. 24,302

D. Joseph English

Reg. No. 42,514

Mark C. Comtois

Reg. No. 46,285

Patrick D. McPherson

Reg. No. 46,255

DUANE MORRIS LLP
1667 K Street, N.W., Suite 700
Washington, DC 20006
Telephone: (202) 776-7800
Telecopier: (202) 776-7801

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